Louis & San Francisco Co., 232 U. S. 318.) To endeavor to integrate this field of law, to correlate the constitutional problems implicit in the legislation from the Ash Pan Act to the Webb-Kenyon Act, presents one of the most fascinating opportunities for a legal writer, no less than one of the most pressing needs towards a coherent development of the law. We are in danger of the anarchy of isolated decisions. To be sure, it is particularly true in the field of constitutional law, as we have been told by the most philosophic mind on the bench, that "lines are pricked out by the gradual approach and contact of decisions on the opposing sides" (219 U. S. 104, 112). But it is precisely the function of law writers to trace these lines, to indicate their direction, to seek to influence their course.

To quarrel with an author for not doing what he has not attempted to do is like preferring champagne to roast beef. Besides, a third edition is its own justification; as much so as is the size of the circulation of the Saturday Evening Post — but no more so. Not being, usually at least, a work of art one may ask of a law book — to what end? Mr. Judson is right. In the four years that have elapsed since his second edition much water has run under the interstate commerce mill. But Mr. Judson now, as heretofore, has contented himself with being a faithful chronicler rather than a participant in the development of the law. One wonders, however, if Mr. Judson is not partly attempting the impossible and partly needlessly duplicating. To attempt to cover in one book, even of 1000 pages (with its useful reprints of recent federal legislation), vital constitutional questions and general problems of law, together with a detailed commentary on such case-breeding legislation as the Interstate Commerce Act and the Sherman Law, is bound to result in compromises preventing the book from being either a critical study of underlying problems or a faithful digest of all the decisions. Why attempt it? We should have from Mr. Judson analysis, not merely enumeration of cases, when dealing with such subjects as what is commerce, concurrent powers as to interstate commerce, exclusion of foreign corporations, etc., etc. These are questions on which a mind stored with Mr. Judson's experience ought to have much to say. Division of labor in the field of law writing is inevitable. The detailed treatment of decisions of the Interstate Commerce Commission should be left to writers who make that field their special subject, as Mr. Drinker has so admirably done. Similarly does the Trade Commission call for separate treatment, such as it has already received at the hands of several competent writers. It is impossible for Mr. Judson to keep the profession supplied with the latest decisions. That task is now done with oppressive competence by Shepard's Citations and all its voracious tribe. A man who now speaks, and who spoke as early as Mr. Judson did, so shrewdly on the recognition of a separate body of administrative law in dealing with the field that he touches ought to give himself to the profession more generously.

FELIX FRANKFURTER.

TRUST LAWS AND UNFAIR COMPETITION. Report by the Federal Bureau of Corporations, Hon. Joseph E. Davies, Commissioner. Government Printing Office, 1915. pp. 812.

This is a book which every lawyer dealing with important business questions should possess. Prepared originally for the assistance of Congress during the debates which led to the establishment of the Federal Trade Commission, it furnishes — what nowhere else exists — a complete survey of the trust laws of every country in the world, and in so doing constitutes a real contribution to legal literature.

The discussion may be divided naturally into two principal divisions. The first deals with voluntary restraints of trade, where competition among the

members of the combination is suppressed by mutual consent. The second deals with involuntary restraints of trade — where strangers to the combination are coercively excluded from the field by unfair competition.[1] Both voluntary and involuntary restraints are discussed from the point of view of

(1) The common law of English-speaking countries;
(2) The federal anti-trust acts and their interpretation;
(3) The state anti-trust acts and their interpretation;
(4) The statutes and decisions of every important foreign country.

The discussion of voluntary restraints is valuable as a compilation of leading cases, illustrating principles which, on the whole, are well established and familiar. It is interesting also in its exposition of the laws of foreign countries, many of which, reversing the policy of the United States, encourage rather than forbid cartels and other voluntary combinations.

The discussion of unfair competition constitutes by far the most important portion of the book. It collects and classifies a vast amount of material which no textbook, encyclopedia or digest has ever classified before. The reader will be astonished at the wealth of precedents — sometimes decided under general principles of tort, sometimes under statutes against monopolizing or restraint of trade and sometimes under statutes like those of Germany forbidding trade conduct "against good morals" — all of which, properly considered, are cases of unfair competition.

This is a field in which the law is undergoing rapid development and the general principles are only beginning to be understood. The distance already traversed may be illustrated by the case of *Mogul Steamship Co.* v. *McGregor*, [1892] A. C. 25. In that case the House of Lords held that the use of "fighting ships" by the members of a combination of steamship lines for the purpose of ruining a rival line was not actionable — the decision proceeding apparently upon the ground that competition justified any injury, however unconscionable and oppressive, so long as the means employed were not "unlawful *per se*." This test of illegality has long since been abandoned. New wrongs have taken their place among the ancient categories of tort, — such as the use of fighting brands, local price cutting, persistent selling below cost, intimidation of customers, systems of exclusive contracts, and other business methods which, however lawful under some circumstances, may become unlawful when used, not for normal business reasons, but for the purpose of destroying a competitor. Upon the facts of the *Mogul Steamship* case, almost any court would reach a contrary conclusion with regard to "fighting ships" today. *U. S.* v. *Hamburg American Line*, 216 Fed. 971. Competition alone no longer serves to justify a wilful injury. It must be *fair* competition or the justification fails.[2]

This difference in point of view marks the change within a generation from the purely individualistic conception of competition to a conception of competition as a necessary evil, justified only in so far as it possesses social utility — only in so far as its methods are calculated to promote initiative, to release the maximum of human energy and to make business survival dependent upon superior efficiency in public service.

The object of the report is chiefly to collect all the existing material on the

[1] Of course involuntary restraints of trade may be imposed by persons who are not engaged in trade at all or are not engaged in competition with those whose trade is restrained, — as in the case of boycotts by labor unions (Loewe *v.* Lawlor, 208 U. S. 274, 301), or conspiracies by agents of a foreign nation to prevent shipments of war munitions from this country to belligerents abroad (U. S. *v.* Rintelen, Buchanan *et al.*, U. S. Dist. Ct., S. D. N. Y., June 29, 1916). Such cases are unusual, however, and the report of the Bureau of Corporations does not discuss them at any length.

[2] Of course this statement refers only to the substance, and disregards procedural questions as to whether the burden of proving unfairness may not lie upon the plaintiff in some cases.

subject. It does not attempt to reach definitive solutions. The time is not yet ripe to do so. But the material is there, awaiting the gradual synthesis which will create out of it a consistent theory of competitive relations — a theory which will avoid "the ferocious extreme of competition" on the one hand, and its complete cessation on the other. Such a theory will mark a great step forward in the readjustment of our legal system to the needs of a complex industrial civilization.

THURLOW M. GORDON.

SELECT CASES AND OTHER AUTHORITIES ON THE LAW OF WILLS AND ADMINISTRATION. By Joseph Warren. Cambridge. Published by the Editor. 1917. pp. xi, 879.

An outstanding feature of Professor Warren's collection of cases is the fact that the larger part of the volume — to be precise, four hundred and eighty-eight out of the eight hundred and seventy-nine pages — is devoted to the subject of administration. This is an innovation upon the usual practice of case-book editors, who, following the line of least resistance, emphasize the less difficult topics of the form, execution and revocation of wills. Yet every lawyer recognizes that the law of executors and administrators is not less important than the other portion of testamentary law. Professor Warren's book, because of its emphasis upon this comparatively neglected field, ought to receive special recognition by teachers and students.

While the evolution of our law of wills has been relatively neat and orderly, there is hardly a branch that has had less logic and method in its historical development than that of administration. The accidental and historical distinctions between law and equity, between real and personal property, and between the jurisdictions of state and church courts, have here left their mark deeply impressed. The resulting intricacy, which made the title "executors and administrators" a favorite one with the authors of mediaeval abridgments, has rendered it necessary that the subject be practically reconstructed in modern times. The editor has given full recognition to this fact by selecting for the most part modern material as a basis for the study of the subject. Thus, a long chapter is devoted to the very modern subject of inheritance taxes (pages 503–579), and the matters of survival of claims and the performance of the contracts of executors and administrators are surprisingly well treated by means of recent English and American cases, including even so recent a case as *Quirk* v. *Thomas*, [1916] 1 K. B. 516.

Valuable notes throughout the book supplement the text without affecting its usefulness as a case book for the use of students. A good example of such a note, referring not only to reported cases but to abundant statutory material, may be found at pages 283 to 285, where the editor refers to the American statutes giving to the pretermitted heir or the posthumous child a protection which was denied by the extreme liberty of testation authorized by the English law.

The excellent character of the typography and the generally agreeable form of the volume deserve special commendation. It is believed that an index might have rendered the book useful to the practitioner without detracting from its value for the purpose for which it was primarily intended.

ORRIN K. MCMURRAY.

TELEGRAPH AND TELEPHONE COMPANIES. Second Edition. By S. Walter Jones. Kansas City, Missouri: Vernon Law Book Company. 1916. pp. xxiv, 1065.

The publication of a new edition of this standard work, issued originally a decade ago, is timely in view of the extensive development of the law appli-